IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8353 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VISHWASGIRI ALIAS VISHAL KALUGIRI GOSWAMI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner No. 1

MR AMRISH K PANDYA for Petitioner No. 1

MR MITA PANCHAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 27/08/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order passed by the Police Commissioner, Ahmedabad City, on 15.2.2003, in exercise

of powers under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "PASA" Act) directing the detention of the petitioner and declaring him as a "bootlegger" within the meaning of the PASA Act. In pursuance of the said order impugned in this petition, the petitioner is detained since 15.2.2003 in jail.

2. The grounds served upon the petitioner and as placed on record reveals that the detaining authority relied upon two aspects, (i) registering of the crimes against the petitioner, three in all, on 15.8.2002, on 25.8.2002 and on 12.1.2003 under Sec. 66(b), 65(e), 81, 83 and 116 (1)(b) of the Bombay Prohibition Act. First two offences relating to country liquor, while the third one is in respect of foreign liquor and the other aspect which the detaining authority took into consideration is the statements of the witnesses recorded by the proposing authority, one on 13.2.2002, verified by the detaining authority on 14.2.2003 and the other also recorded by the proposing authority on 13.2.2002 and verified by the detaining authority on 14.2.2003. In first statement, the witness narrates the incident of 17.1.2002. It is reported that, on suspicion that the witness was offering information about the illegal activities in liquor of the petitioner to the police, the witness was beaten. When the group gathered, the petitioner with open knife in his hand rushed towards the crowd, disrupting the public order. The second incident is referred by the other witness occurred on 14.1.2003 wherein also the petitioner demanded the vehicle of the witness for the transportation of foreign liquor. On refusal, the witness was beaten, and like earlier occurrence, on gathering of crowd, with open knife, the petitioner rushed towards the crowd, creating terror. This is the material taken into consideration by the detaining authority to reach to subjective satisfaction as to pass order under Section 3(1) of the PASA Act.

3. Learned Advocate Mr. Amrish K. Pandya for learned Advocate Ms. Krishna U. Mishra for the petitioner and learned AGP Ms. Mita Panchal on behalf of respondents were heard. Learned AGP places on record the affidavit-in-reply filed by the detaining authority.

4. Various grounds were urged on behalf of the petitioner and controverted by the learned AGP. Apart from the other contentions raised, what apparently emerges from the record is the first and second offences under Bombay Prohibition Act registered against the petitioner on 15th August and 25th August, 2002. The

third one was registered on 12.1.2003. Much depends upon the human behaviour when it is proposed to be taken out of circulation of the society in shape of preventive detention, the reasonable apprehension on the part of the authority to repeat past behaviour is the backbone of passing detention order. The present behaviour and the future behaviour can only be judged by the past behaviour of the detenu and the reasonable apprehension of tendency to continue the behaviour exhibited in the past. In legal terminology, it may be labelled as proximity between the passing of the order and the material relied upon by the detaining authority. On screening, it is found that there is very long time gap between registering of offences No. 1 and 2 and offence No.3. One cannot link the third offence registered against the petitioner with the offences registered against the petitioner earlier on 15.8.2002 and 25.8.2002 and, therefore, what remains is the only solitary offence registered against the petitioner on 12.1.2003 for transporting foreign liquor. Now, in this connection, when there is no proximity with the earlier offences No. 1 and 2 committed by the petitioner, then, the statements recorded by the proposing authority in pursuance of the third offence registered, on screening, it is found with infirmity of delay. The statements are recorded on 13.2.2003 of both the witnesses. The solitary offence which we can take into consideration is registered on 12.1.2003 though the incidents which the witnesses narrates are of 17.1.2003 and 14.1.2003, but the proposing authority took time to record the above said statements and to rely upon the incident only after one month of the registering of the offence i.e. on 13.2.2003. Therefore, the order which the detaining authority has passed against the petitioner is vitiated firstly by relying upon two stale cases and only solitary incident of 12.1.2003, and secondly by causing delay in preventing the alleged behaviour on recording of the statements relied upon by the detaining authority which came to be recorded only on 13.2.2003 and verified on 14.2.2003. In this view of the matter, the order passed under the PASA Act impugned in this Special Civil Application cannot be sustained.

5. In the above view of the matter, this Special Civil Application is allowed with no order as to costs. The order passed by the Police Commissioner, City of Ahmedabad on 15.2.2003 under Section 3(1) of the PASA Act directing detention of the petitioner is set aside and quashed. Petitioner is directed to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair